

House File 671 - Introduced

HOUSE FILE 671

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HF 494)

(SUCCESSOR TO HF 90)

A BILL FOR

1 An Act establishing the professional counselors licensure
2 compact.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 147G.1 Professional counselors
2 licensure compact.

3 1. *Purpose.* The purpose of this compact is to facilitate
4 the interstate practice of licensed professional counselors
5 with the goal of improving public access to professional
6 counseling services. The practice of professional counseling
7 occurs in the state where the client is located at the time of
8 the counseling services. The compact preserves the regulatory
9 authority of states to protect public health and safety
10 through the current system of state licensure. This compact is
11 designed to achieve the following objectives:

12 a. Increase public access to professional counseling
13 services by providing for the mutual recognition of other
14 member state licenses.

15 b. Enhance the states' ability to protect the public's
16 health and safety.

17 c. Encourage the cooperation of member states in regulating
18 multistate practice for licensed professional counselors.

19 d. Support spouses of relocating active duty military
20 personnel.

21 e. Enhance the exchange of licensure, investigative, and
22 disciplinary information among member states.

23 f. Allow for the use of telehealth technology to facilitate
24 increased access to professional counseling services.

25 g. Support the uniformity of professional counseling
26 licensure requirements throughout the states to promote public
27 safety and public health benefits.

28 h. Invest all member states with the authority to hold a
29 licensed professional counselor accountable for meeting all
30 state practice laws in the state in which the client is located
31 at the time care is rendered through the mutual recognition of
32 member state licenses.

33 i. Eliminate the necessity for licenses in multiple states.

34 j. Provide opportunities for interstate practice by
35 licensed professional counselors who meet uniform licensure

1 requirements.

2 2. *Definitions.* As used in this compact, and except as
3 otherwise provided:

4 a. "*Active duty military*" means full-time duty status in
5 the active uniformed service of the United States, including
6 members of the national guard and reserves on active duty
7 orders pursuant to 10 U.S.C. §1209 and 10 U.S.C. §1211.

8 b. "*Adverse action*" means any administrative, civil,
9 equitable, or criminal action permitted by a state's laws which
10 is imposed by a licensing board or other authority against a
11 licensed professional counselor, including actions against
12 an individual's license or privilege to practice such as
13 revocation, suspension, probation, monitoring of the licensee,
14 limitation on the licensee's practice, or any other encumbrance
15 on licensure affecting a licensed professional counselor's
16 authorization to practice, including issuance of a cease and
17 desist action.

18 c. "*Alternative program*" means a nondisciplinary monitoring
19 or practice remediation process approved by a professional
20 counseling licensing board to address impaired practitioners.

21 d. "*Continuing competence*" and/or "*continuing education*"
22 means a requirement, as a condition of license renewal,
23 to provide evidence of participation in, or completion of,
24 educational and professional activities relevant to practice or
25 area of work.

26 e. "*Counseling compact commission*" or "*commission*" means the
27 national administrative body whose membership consists of all
28 states that have enacted the compact.

29 f. "*Current significant investigative information*" means all
30 of the following:

31 (1) Investigative information that a licensing board,
32 after a preliminary inquiry that includes notification and
33 an opportunity for the licensed professional counselor to
34 respond, if required by state law, has reason to believe is
35 not groundless and, if proved true, would indicate more than a

1 minor infraction.

2 (2) Investigative information that indicates that the
3 licensed professional counselor represents an immediate threat
4 to public health and safety regardless of whether the licensed
5 professional counselor has been notified and had an opportunity
6 to respond.

7 *g. "Data system"* means a repository of information about
8 licensees, including but not limited to continuing education,
9 examination, licensure, investigative, privilege to practice,
10 and adverse action information.

11 *h. "Encumbered license"* means a license in which an
12 adverse action restricts the practice of licensed professional
13 counseling by the licensee and said adverse action has been
14 reported to the national practitioners data bank.

15 *i. "Encumbrance"* means a revocation or suspension of, or any
16 limitation on, the full and unrestricted practice of licensed
17 professional counseling by a licensing board.

18 *j. "Executive committee"* means a group of directors elected
19 or appointed to act on behalf of, and within the powers granted
20 to them by, the commission.

21 *k. "Home state"* means the member state that is the
22 licensee's primary state of residence.

23 *l. "Impaired practitioner"* means an individual who has a
24 condition that may impair the individual's ability to practice
25 as a licensed professional counselor without some type of
26 intervention and may include but is not limited to alcohol and
27 drug dependence, mental health impairment, and neurological or
28 physical impairments.

29 *m. "Investigative information"* means information, records,
30 and documents received or generated by a professional
31 counseling licensing board pursuant to an investigation.

32 *n. "Jurisprudence requirement"*, if required by a member
33 state, means the assessment of an individual's knowledge of
34 the laws and rules governing the practice of professional
35 counseling in a state.

1 *o.* "Licensed professional counselor" means a counselor
2 licensed by a member state, regardless of the title used by
3 that state, to independently assess, diagnose, and treat
4 behavioral health conditions.

5 *p.* "Licensee" means an individual who currently holds
6 an authorization from the state to practice as a licensed
7 professional counselor.

8 *q.* "Licensing board" means the agency of a state, or
9 equivalent, that is responsible for the licensing and
10 regulation of licensed professional counselors.

11 *r.* "Member state" means a state that has enacted the
12 compact.

13 *s.* "Privilege to practice" means a legal authorization,
14 which is equivalent to a license, permitting the practice of
15 professional counseling in a remote state.

16 *t.* "Professional counseling" means the assessment,
17 diagnosis, and treatment of behavioral health conditions by a
18 licensed professional counselor.

19 *u.* "Remote state" means a member state other than the home
20 state, where a licensee is exercising or seeking to exercise
21 the privilege to practice.

22 *v.* "Rule" means a regulation promulgated by the commission
23 that has the force of law.

24 *w.* "Single-state license" means a licensed professional
25 counselor license issued by a member state that authorizes
26 practice only within the issuing state and does not include a
27 privilege to practice in any other member state.

28 *x.* "State" means any state, commonwealth, district, or
29 territory of the United States that regulates the practice of
30 professional counseling.

31 *y.* "Telehealth" means the application of telecommunication
32 technology to deliver professional counseling services remotely
33 to assess, diagnose, and treat behavioral health conditions.

34 *z.* "Unencumbered license" means a license that authorizes
35 a licensed professional counselor to engage in the full and

1 unrestricted practice of professional counseling.

2 3. *State participation in the compact.*

3 a. To participate in the compact, a state must currently do
4 all of the following:

5 (1) License and regulate licensed professional counselors.

6 (2) Require a licensee to pass a nationally recognized exam
7 approved by the commission.

8 (3) Require a licensee to have a sixty semester-hour or
9 ninety quarter-hour master's degree in counseling or sixty
10 semester-hours or ninety quarter-hours of graduate course work
11 including the following topic areas:

12 (a) Professional counseling orientation and ethical
13 practice.

14 (b) Social and cultural diversity.

15 (c) Human growth and development.

16 (d) Career development.

17 (e) Counseling and helping relationships.

18 (f) Group counseling and group work.

19 (g) Diagnosis, treatment, assessment, and testing.

20 (h) Research and program evaluation.

21 (i) Other areas as determined by the commission.

22 (4) Require a licensee to complete a supervised
23 postgraduate professional experience as defined by the
24 commission.

25 (5) Have a mechanism in place for receiving and
26 investigating complaints about licensees.

27 b. A member state shall do all of the following:

28 (1) Participate fully in the commission's data system,
29 including using the commission's unique identifier as defined
30 in rules.

31 (2) Notify the commission, in compliance with the terms
32 of the compact and rules, of any adverse action or the
33 availability of investigative information regarding a licensee.

34 (3) Implement or utilize procedures for considering the
35 criminal history records of applicants for an initial privilege

1 to practice. These procedures shall include the submission of
2 fingerprints or other biometric-based information by applicants
3 for the purpose of obtaining an applicant's criminal history
4 record information from the federal bureau of investigation
5 and the agency responsible for retaining that state's criminal
6 records.

7 (a) A member state must fully implement a criminal
8 background check requirement, within a time frame established
9 by rule, by receiving the results of the federal bureau of
10 investigation record search and shall use the results in making
11 licensure decisions.

12 (b) Communication between a member state, the commission,
13 and among member states regarding the verification of
14 eligibility for licensure through the compact shall not
15 include any information received from the federal bureau of
16 investigation relating to a federal criminal records check
17 performed by a member state under Pub. L. No. 92-544.

18 (4) Comply with the rules of the commission.

19 (5) Require an applicant to obtain or retain a license
20 in the home state and meet the home state's qualifications
21 for licensure or renewal of licensure, as well as all other
22 applicable state laws.

23 (6) Grant the privilege to practice to a licensee holding
24 a valid unencumbered license in another member state in
25 accordance with the terms of the compact and rules.

26 (7) Provide for the attendance of the state's commissioner
27 at commission meetings.

28 *c.* A member state may charge a fee for granting the
29 privilege to practice.

30 *d.* An individual not residing in a member state shall
31 continue to be able to apply for a member state's single-state
32 license as provided under the laws of each member state.

33 However, the single-state license granted to these individuals
34 shall not be recognized as granting a privilege to practice
35 professional counseling in any other member state.

1 e. Nothing in this compact shall affect the requirements
2 established by a member state for the issuance of a
3 single-state license.

4 f. A license issued to a licensed professional counselor by
5 a home state to a resident in that state shall be recognized
6 by each member state as authorizing a licensed professional
7 counselor to practice professional counseling, under a
8 privilege to practice, in each member state.

9 4. *Privilege to practice.*

10 a. To exercise the privilege to practice under the terms of
11 the compact, the licensee shall do all of the following:

12 (1) Hold a license in the home state.

13 (2) Have a valid United States social security number or
14 national practitioner identifier.

15 (3) Be eligible for a privilege to practice in any member
16 state in accordance with paragraphs "d", "g", and "h".

17 (4) Have not had any encumbrance or restriction against any
18 license or privilege to practice within the previous two years
19 from the date of application.

20 (5) Notify the commission that the licensee is seeking the
21 privilege to practice within a remote state.

22 (6) Pay any applicable fees, including any state fee, for
23 the privilege to practice.

24 (7) Meet any continuing competence or continuing education
25 requirements established by the home state.

26 (8) Meet any jurisprudence requirements established by the
27 remote state in which the licensee is seeking a privilege to
28 practice.

29 (9) Report to the commission any adverse action,
30 encumbrance, or restriction on any license taken by any
31 nonmember state within thirty days from the date the action is
32 taken.

33 b. The privilege to practice is valid until the expiration
34 date of the home state license. The licensee must comply with
35 the requirements of paragraph "a" to maintain the privilege to

1 practice in the remote state.

2 *c.* A licensee providing professional counseling in a remote
3 state under the privilege to practice shall adhere to the laws
4 and regulations of the remote state.

5 *d.* A licensee providing professional counseling services in
6 a remote state is subject to that state's regulatory authority.
7 A remote state may, in accordance with due process and that
8 state's laws, remove a licensee's privilege to practice in the
9 remote state for a specific period of time, impose fines, or
10 take any other necessary actions to protect the health and
11 safety of its citizens. The licensee may be ineligible for a
12 privilege to practice in any member state until the specific
13 time for removal has passed and all fines are paid.

14 *e.* If a home state license is encumbered, the licensee shall
15 lose the privilege to practice in any remote state until all
16 of the following occur:

17 (1) The home state license is no longer encumbered.

18 (2) The licensee has not had any encumbrance or restriction
19 against any license or privilege to practice within the
20 previous two years.

21 *f.* Once an encumbered license in the home state is restored
22 to good standing, the licensee must meet the requirements of
23 paragraph "a" to obtain a privilege to practice in any remote
24 state.

25 *g.* If a licensee's privilege to practice in any remote state
26 is removed, the individual may lose the privilege to practice
27 in all other remote states until all of the following occur:

28 (1) The specific period of time for which the privilege to
29 practice was removed has ended.

30 (2) All fines have been paid.

31 (3) The licensee has not had any encumbrance or restriction
32 against any license or privilege to practice within the
33 previous two years.

34 *h.* Once the requirements of paragraph "g" have been met, the
35 licensee must meet the requirements of paragraph "a" to obtain a

1 privilege to practice in a remote state.

2 5. *Obtaining a new home state license based on a privilege*
3 *to practice.*

4 a. A licensed professional counselor may hold a home state
5 license, which allows for a privilege to practice in other
6 member states, in only one member state at a time.

7 b. If a licensed professional counselor changes primary
8 state of residence by moving between two member states:

9 (1) The licensed professional counselor shall file an
10 application for obtaining a new home state license based on a
11 privilege to practice, pay all applicable fees, and notify the
12 current and new home state in accordance with applicable rules
13 adopted by the commission.

14 (2) Upon receipt of an application for obtaining a new
15 home state license by virtue of a privilege to practice, the
16 new home state shall verify that the licensed professional
17 counselor meets the pertinent criteria outlined in subsection
18 4 via the data system, without need for primary source
19 verification except for the following:

20 (a) A federal bureau of investigation fingerprint-based
21 criminal background check if not previously performed or
22 updated pursuant to applicable rules adopted by the commission
23 in accordance with Pub. L. No. 92-544.

24 (b) Other criminal background checks as required by the new
25 home state.

26 (c) Completion of any requisite jurisprudence requirements
27 of the new home state.

28 (3) The former home state shall convert the former home
29 state license into a privilege to practice once the new home
30 state has activated the new home state license in accordance
31 with applicable rules adopted by the commission.

32 (4) Notwithstanding any other provision of this compact, if
33 the licensed professional counselor cannot meet the criteria in
34 subsection 4, the new home state may apply its requirements for
35 issuing a new single state license.

1 (5) The licensed professional counselor shall pay all
2 applicable fees to the new home state in order to be issued a
3 new home state license.

4 c. If a licensed professional counselor changes primary
5 state of residence by moving from a member state to a nonmember
6 state, or from a nonmember state to a member state, the state
7 criteria shall apply for issuance of a single state license in
8 the new state.

9 d. Nothing in this compact shall interfere with a licensee's
10 ability to hold a single state license in multiple states;
11 however, for the purposes of this compact, a licensee shall
12 have only one home state license.

13 e. Nothing in this compact shall affect the requirements
14 established by a member state for the issuance of a single
15 state license.

16 6. *Active duty military personnel or their spouses.* Active
17 duty military personnel or their spouses shall designate a
18 home state where the individual has a current license in good
19 standing. The individual may retain the home state designation
20 during the period the service member is on active duty.
21 Subsequent to designating a home state, the individual shall
22 only change their home state through application for licensure
23 in the new state or through the process outlined in subsection
24 5.

25 7. *Compact privilege to practice telehealth.*

26 a. Member states shall recognize the right of a licensed
27 professional counselor, licensed by a home state in accordance
28 with subsection 3 and under rules promulgated by the
29 commission, to practice professional counseling in any member
30 state via telehealth under a privilege to practice as provided
31 in the compact and rules promulgated by the commission.

32 b. A licensee providing professional counseling services in
33 a remote state under the privilege to practice shall adhere to
34 the laws and regulations of the remote state.

35 8. *Adverse actions.*

1 *a.* In addition to the other powers conferred by state law,
2 a remote state shall have the authority, in accordance with
3 existing state due process law, to do all of the following:

4 (1) Take adverse action against a licensed professional
5 counselor's privilege to practice within that member state.

6 (2) Issue subpoenas for both hearings and investigations
7 that require the attendance and testimony of witnesses as well
8 as the production of evidence. Subpoenas issued by a licensing
9 board in a member state for the attendance and testimony of
10 witnesses or the production of evidence from another member
11 state shall be enforced in the latter state by any court of
12 competent jurisdiction, according to the practice and procedure
13 of that court applicable to subpoenas issued in proceedings
14 pending before it. The issuing authority shall pay any witness
15 fees, travel expenses, mileage, and other fees required by
16 the service statutes of the state in which the witnesses or
17 evidence are located.

18 (3) Only the home state shall have the power to take adverse
19 action against a licensed professional counselor's license
20 issued by the home state.

21 *b.* For purposes of taking adverse action, the home state
22 shall give the same priority and effect to reported conduct
23 received from a member state as it would if the conduct had
24 occurred within the home state. In so doing, the home state
25 shall apply its own state laws to determine appropriate action.

26 *c.* The home state shall complete any pending investigations
27 of a licensed professional counselor who changes primary state
28 of residence during the course of the investigations. The home
29 state shall also have the authority to take appropriate action
30 and shall promptly report the conclusions of the investigations
31 to the administrator of the data system. The administrator of
32 the coordinated licensure information system shall promptly
33 notify the new home state of any adverse actions.

34 *d.* A member state, if otherwise permitted by state law,
35 may recover from the affected licensed professional counselor

1 the costs of investigations and dispositions of cases
2 resulting from any adverse action taken against that licensed
3 professional counselor.

4 e. A member state may take adverse action based on the
5 factual findings of the remote state, provided that the member
6 state follows its own procedures for taking the adverse action.

7 f. *Joint investigations.*

8 (1) In addition to the authority granted to a member state
9 by its respective professional counseling practice act or other
10 applicable state law, any member state may participate with
11 other member states in joint investigations of licensees.

12 (2) Member states shall share any investigative,
13 litigation, or compliance materials in furtherance of any joint
14 or individual investigation initiated under the compact.

15 g. If adverse action is taken by the home state against
16 the license of a licensed professional counselor, the licensed
17 professional counselor's privilege to practice in all other
18 member states shall be deactivated until all encumbrances
19 have been removed from the state license. All home state
20 disciplinary orders that impose adverse action against the
21 license of a licensed professional counselor shall include a
22 statement that the licensed professional counselor's privilege
23 to practice is deactivated in all member states during the
24 pendency of the order.

25 h. If a member state takes adverse action, it shall promptly
26 notify the administrator of the data system. The administrator
27 of the data system shall promptly notify the home state of any
28 adverse actions by remote states.

29 i. Nothing in this compact shall override a member state's
30 decision that participation in an alternative program may be
31 used in lieu of adverse action.

32 9. *Establishment of counseling compact commission.*

33 a. The compact member states hereby create and establish a
34 joint public agency known as the counseling compact commission.

35 (1) The commission is an instrumentality of the compact

1 states.

2 (2) Venue is proper and judicial proceedings by or against
3 the commission shall be brought solely and exclusively in a
4 court of competent jurisdiction where the principal office of
5 the commission is located. The commission may waive venue and
6 jurisdictional defenses to the extent it adopts or consents to
7 participate in alternative dispute resolution proceedings.

8 (3) Nothing in this compact shall be construed to be a
9 waiver of sovereign immunity.

10 *b. Membership, voting, and meetings.*

11 (1) Each member state shall have and be limited to one
12 delegate selected by that member state's licensing board.

13 (2) The delegate shall be one of the following:

14 (a) A current member of the licensing board at the time of
15 appointment who is a licensed professional counselor or public
16 member.

17 (b) An administrator of the licensing board.

18 (3) Any delegate may be removed or suspended from office
19 as provided by the law of the state from which the delegate is
20 appointed.

21 (4) The member state licensing board shall fill any vacancy
22 occurring on the commission within sixty days of a vacancy.

23 (5) Each delegate shall be entitled to one vote with regard
24 to the promulgation of rules and creation of bylaws and shall
25 otherwise have an opportunity to participate in the business
26 and affairs of the commission.

27 (6) A delegate shall vote in person or by such other
28 means as provided in the bylaws. The bylaws may provide for
29 delegates' participation in meetings by telephone or other
30 means of communication.

31 (7) The commission shall meet at least once during each
32 calendar year. Additional meetings shall be held as set forth
33 in the bylaws.

34 (8) The commission shall by rule establish a term of office
35 for delegates and may by rule establish term limits.

1 c. The commission shall have the following powers and
2 duties:

3 (1) Establish the fiscal year of the commission.

4 (2) Establish bylaws.

5 (3) Maintain its financial records in accordance with the
6 bylaws.

7 (4) Meet and take such actions as are consistent with the
8 provisions of this compact and the bylaws.

9 (5) Promulgate rules which shall be binding to the extent
10 and in the manner provided for in the compact.

11 (6) Bring and prosecute legal proceedings or actions in the
12 name of the commission, provided that the standing of any state
13 licensing board to sue or be sued under applicable law shall
14 not be affected.

15 (7) Purchase and maintain insurance and bonds.

16 (8) Borrow, accept, or contract for services of personnel,
17 including but not limited to employees of a member state.

18 (9) Hire employees, elect or appoint officers, fix
19 compensation, define duties, grant such individuals appropriate
20 authority to carry out the purposes of the compact, and
21 establish the commission's personnel policies and programs
22 relating to conflicts of interest, qualifications of personnel,
23 and other related personnel matters.

24 (10) Accept any and all appropriate donations and grants
25 of money, equipment, supplies, materials, and services, and
26 receive, utilize, and dispose of the same; provided that at all
27 times the commission shall avoid any appearance of impropriety
28 or conflict of interest.

29 (11) Lease, purchase, accept appropriate gifts or donations
30 of, or otherwise to own, hold, improve or use, any property,
31 real, personal, or mixed; provided that at all times the
32 commission shall avoid any appearance of impropriety.

33 (12) Sell, convey, mortgage, pledge, lease, exchange,
34 abandon, or otherwise dispose of any property, real, personal,
35 or mixed.

1 (13) Establish a budget and make expenditures.

2 (14) Borrow money.

3 (15) Appoint committees, including standing committees
4 composed of members, state regulators, state legislators or
5 their representatives, and consumer representatives, and such
6 other interested persons as may be designated in this compact
7 and the bylaws.

8 (16) Provide and receive information from, and cooperate
9 with, law enforcement agencies.

10 (17) Establish and elect an executive committee.

11 (18) Perform such other functions as may be necessary or
12 appropriate to achieve the purposes of this compact consistent
13 with the state regulation of professional counseling licensure
14 and practice.

15 *d. The executive committee.*

16 (1) The executive committee shall have the power to act
17 on behalf of the commission according to the terms of this
18 compact.

19 (2) The executive committee shall be composed of up to
20 eleven members:

21 (a) Seven voting members who are elected by the commission
22 from the current membership of the commission.

23 (b) Up to four ex officio, nonvoting members from four
24 recognized national professional counselor organizations.

25 (c) The ex officio, nonvoting members shall be selected by
26 their respective organizations.

27 (3) The commission may remove any member of the executive
28 committee as provided in bylaws.

29 (4) The executive committee shall meet at least annually.

30 (5) The executive committee shall have the following duties
31 and responsibilities:

32 (a) Recommend to the entire commission changes to the rules
33 or bylaws, changes to this compact legislation, fees paid by
34 compact member states such as annual dues, and any commission
35 compact fee charged to licensees for the privilege to practice.

1 (b) Ensure compact administration services are
2 appropriately provided, contractual or otherwise.

3 (c) Prepare and recommend the budget.

4 (d) Maintain financial records on behalf of the commission.

5 (e) Monitor compact compliance of member states and provide
6 compliance reports to the commission.

7 (f) Establish additional committees as necessary.

8 (g) Other duties as provided in rules or bylaws.

9 *e. Meetings of the commission.*

10 (1) All meetings shall be open to the public, and public
11 notice of meetings shall be given in the same manner as
12 required under the rulemaking provisions in subsection 11.

13 (2) The commission or the executive committee or other
14 committees of the commission may convene in a closed, nonpublic
15 meeting if the commission or executive committee or other
16 committees of the commission must discuss any of the following:

17 (a) Noncompliance of a member state with its obligations
18 under the compact.

19 (b) The employment, compensation, discipline, or other
20 matters, practices, or procedures related to specific employees
21 or other matters related to the commission's internal personnel
22 practices and procedures.

23 (c) Current, threatened, or reasonably anticipated
24 litigation.

25 (d) Negotiation of contracts for the purchase, lease, or
26 sale of goods, services, or real estate.

27 (e) Accusing any person of a crime or formally censuring any
28 person.

29 (f) Disclosure of trade secrets or commercial or financial
30 information that is privileged or confidential.

31 (g) Disclosure of information of a personal nature where
32 disclosure would constitute a clearly unwarranted invasion of
33 personal privacy.

34 (h) Disclosure of investigative records compiled for law
35 enforcement purposes.

1 (i) Disclosure of information related to any investigative
2 reports prepared by or on behalf of or for use of the
3 commission or other committee charged with responsibility of
4 investigation or determination of compliance issues pursuant
5 to the compact.

6 (j) Matters specifically exempted from disclosure by
7 federal or member state statute.

8 (3) If a meeting, or portion of a meeting, is closed
9 pursuant to this paragraph "e", the commission's legal counsel
10 or designee shall certify that the meeting may be closed and
11 shall reference each relevant exempting provision.

12 (4) The commission shall keep minutes that fully and clearly
13 describe all matters discussed in a meeting and shall provide
14 a full and accurate summary of actions taken, and the reasons
15 therefore, including a description of the views expressed.
16 All documents considered in connection with an action shall
17 be identified in such minutes. All minutes and documents of
18 a closed meeting shall remain under seal, subject to release
19 by a majority vote of the commission or order of a court of
20 competent jurisdiction.

21 *f. Financing the commission.*

22 (1) The commission shall pay, or provide for the payment of,
23 the reasonable expenses of its establishment, organization, and
24 ongoing activities.

25 (2) The commission may accept any and all appropriate
26 revenue sources, donations, and grants of money, equipment,
27 supplies, materials, and services.

28 (3) The commission may levy on and collect an annual
29 assessment from each member state or impose fees on other
30 parties to cover the cost of the operations and activities
31 of the commission and its staff, which must be in a total
32 amount sufficient to cover its annual budget as approved each
33 year for which revenue is not provided by other sources. The
34 aggregate annual assessment amount shall be allocated based
35 upon a formula to be determined by the commission, which shall

1 promulgate a rule binding upon all member states.

2 (4) The commission shall not incur obligations of any kind
3 prior to securing the funds adequate to meet the same; nor
4 shall the commission pledge the credit of any of the member
5 states, except by and with the authority of the member state.

6 (5) The commission shall keep accurate accounts of all
7 receipts and disbursements. The receipts and disbursements of
8 the commission shall be subject to the audit and accounting
9 procedures established under its bylaws. However, all receipts
10 and disbursements of funds handled by the commission shall be
11 audited yearly by a certified or licensed public accountant,
12 and the report of the audit shall be included in and become
13 part of the annual report of the commission.

14 *g. Qualified immunity, defense, and indemnification.*

15 (1) The members, officers, executive director, employees,
16 and representatives of the commission shall be immune from suit
17 and liability, either personally or in their official capacity,
18 for any claim for damage to or loss of property or personal
19 injury or other civil liability caused by or arising out of any
20 actual or alleged act, error, or omission that occurred, or
21 that the person against whom the claim is made had a reasonable
22 basis for believing occurred within the scope of commission
23 employment, duties, or responsibilities; provided that nothing
24 in this paragraph "g" shall be construed to protect any such
25 person from suit or liability for any damage, loss, injury,
26 or liability caused by the intentional or willful or wanton
27 misconduct of that person.

28 (2) The commission shall defend any member, officer,
29 executive director, employee, or representative of the
30 commission in any civil action seeking to impose liability
31 arising out of any actual or alleged act, error, or omission
32 that occurred within the scope of commission employment,
33 duties, or responsibilities, or that the person against
34 whom the claim is made had a reasonable basis for believing
35 occurred within the scope of commission employment, duties,

1 or responsibilities; provided that nothing herein shall be
2 construed to prohibit that person from retaining the person's
3 own counsel; and provided further, that the actual or alleged
4 act, error, or omission did not result from that person's
5 intentional or willful or wanton misconduct.

6 (3) The commission shall indemnify and hold harmless
7 any member, officer, executive director, employee, or
8 representative of the commission for the amount of any
9 settlement or judgment obtained against that person arising
10 out of any actual or alleged act, error, or omission that
11 occurred within the scope of commission employment, duties,
12 or responsibilities, or that such person had a reasonable
13 basis for believing occurred within the scope of commission
14 employment, duties, or responsibilities, provided that the
15 actual or alleged act, error, or omission did not result from
16 the intentional, willful, or wanton misconduct of that person.

17 10. *Data system.*

18 a. The commission shall provide for the development,
19 maintenance, operation, and utilization of a coordinated
20 database and reporting system containing licensure, adverse
21 action, and investigative information on all licensed
22 individuals in member states.

23 b. Notwithstanding any other provision of state law to
24 the contrary, a member state shall submit a uniform data set
25 to the data system on all individuals to whom this compact
26 is applicable as required by the rules of the commission,
27 including all of the following:

28 (1) Identifying information.

29 (2) Licensure data.

30 (3) Adverse actions against a license or privilege to
31 practice.

32 (4) Nonconfidential information related to alternative
33 program participation.

34 (5) Any denial of application for licensure, and the reason
35 for such denial.

1 (6) Current significant investigative information.

2 (7) Other information that may facilitate the
3 administration of this compact, as determined by the rules of
4 the commission.

5 *c.* Investigative information pertaining to a licensee in any
6 member state will only be available to other member states.

7 *d.* The commission shall promptly notify all member states of
8 any adverse action taken against a licensee or an individual
9 applying for a license. Adverse action information pertaining
10 to a licensee in any member state will be available to any
11 other member state.

12 *e.* Member states contributing information to the data
13 system may designate information that may not be shared with
14 the public without the express permission of the contributing
15 state.

16 *f.* Any information submitted to the data system that is
17 subsequently required to be expunged by the laws of the member
18 state contributing the information shall be removed from the
19 data system.

20 11. *Rulemaking.*

21 *a.* The commission shall promulgate reasonable rules in
22 order to effectively and efficiently achieve the purpose of
23 the compact. Notwithstanding the foregoing, in the event the
24 commission exercises its rulemaking authority in a manner that
25 is beyond the scope of the purposes of the compact, or the
26 powers granted hereunder, then such an action by the commission
27 shall be invalid and have no force or effect.

28 *b.* The commission shall exercise its rulemaking powers
29 pursuant to the criteria set forth in this subsection and the
30 rules adopted thereunder. Rules and amendments shall become
31 binding as of the date specified in each rule or amendment.

32 *c.* If a majority of the legislatures of the member states
33 rejects a rule, by enactment of a statute or resolution in the
34 same manner used to adopt the compact within four years of the
35 date of adoption of the rule, then such rule shall have no

1 further force and effect in any member state.

2 *d.* Rules or amendments to the rules shall be adopted at a
3 regular or special meeting of the commission.

4 *e.* Prior to promulgation and adoption of a final rule by
5 the commission, and at least thirty days in advance of the
6 meeting at which the rule will be considered and voted upon,
7 the commission shall file a notice of proposed rulemaking in
8 all of the following places:

9 (1) On the internet site of the commission or other publicly
10 accessible platform.

11 (2) On the internet site of each member state professional
12 counseling licensing board or other publicly accessible
13 platform or the publication in which each state would otherwise
14 publish proposed rules.

15 *f.* The notice of proposed rulemaking shall include all of
16 the following:

17 (1) The proposed time, date, and location of the meeting in
18 which the rule will be considered and voted upon.

19 (2) The text of the proposed rule or amendment and the
20 reason for the proposed rule.

21 (3) A request for comments on the proposed rule from any
22 interested person.

23 (4) The manner in which interested persons may submit notice
24 to the commission of their intention to attend the public
25 hearing and any written comments.

26 *g.* Prior to adoption of a proposed rule, the commission
27 shall allow persons to submit written data, facts, opinions,
28 and arguments, which shall be made available to the public.

29 *h.* The commission shall grant an opportunity for a public
30 hearing before it adopts a rule or amendment if a hearing is
31 requested by any of the following:

32 (1) At least twenty-five persons.

33 (2) A state or federal governmental subdivision or agency.

34 (3) An association having at least twenty-five members.

35 *i.* If a hearing is held on the proposed rule or amendment,

1 the commission shall publish the place, time, and date of
2 the scheduled public hearing. If the hearing is held via
3 electronic means, the commission shall publish the mechanism
4 for access to the electronic hearing.

5 (1) All persons wishing to be heard at the hearing shall
6 notify the executive director of the commission or other
7 designated member in writing of their desire to appear and
8 testify at the hearing not less than five business days before
9 the scheduled date of the hearing.

10 (2) Hearings shall be conducted in a manner providing each
11 person who wishes to comment a fair and reasonable opportunity
12 to comment orally or in writing.

13 (3) All hearings shall be recorded. A copy of the recording
14 shall be made available on request.

15 (4) Nothing in this paragraph "h" shall be construed as
16 requiring a separate hearing on each rule. Rules may be
17 grouped for the convenience of the commission at hearings
18 required by this subsection.

19 *j.* Following the scheduled hearing date, or by the close
20 of business on the scheduled hearing date if the hearing was
21 not held, the commission shall consider all written and oral
22 comments received.

23 *k.* If no written notice of intent to attend the public
24 hearing by interested parties is received, the commission may
25 proceed with promulgation of the proposed rule without a public
26 hearing.

27 *l.* The commission shall, by majority vote of all members,
28 take final action on the proposed rule and shall determine the
29 effective date of the rule, if any, based on the rulemaking
30 record and the full text of the rule.

31 *m.* Upon determination that an emergency exists, the
32 commission may consider and adopt an emergency rule without
33 prior notice, opportunity for comment, or hearing, provided
34 that the usual rulemaking procedures provided in the compact
35 and in this subsection shall be retroactively applied to the

1 rule as soon as reasonably possible, in no event later than
2 ninety days after the effective date of the rule. For the
3 purposes of this provision, an emergency rule is one that must
4 be adopted immediately in order to do any of the following:

5 (1) Meet an imminent threat to public health, safety, or
6 welfare.

7 (2) Prevent a loss of commission or member state funds.

8 (3) Meet a deadline for the promulgation of an
9 administrative rule that is established by federal law or rule.

10 (4) Protect public health and safety.

11 *n.* The commission or an authorized committee of the
12 commission may direct revisions to a previously adopted rule
13 or amendment for purposes of correcting typographical errors,
14 errors in format, errors in consistency, or grammatical
15 errors. Public notice of any revisions shall be posted on
16 the internet site of the commission. The revision shall be
17 subject to challenge by any person for a period of thirty days
18 after posting. The revision may be challenged only on grounds
19 that the revision results in a material change to a rule. A
20 challenge shall be made in writing and delivered to the chair
21 of the commission prior to the end of the notice period. If
22 no challenge is made, the revision shall take effect without
23 further action. If the revision is challenged, the revision
24 shall not take effect without the approval of the commission.

25 12. *Oversight, dispute resolution, and enforcement.*

26 *a. Oversight.*

27 (1) The executive, legislative, and judicial branches
28 of state government in each member state shall enforce this
29 compact and take all actions necessary and appropriate to
30 effectuate the compact's purposes and intent. The provisions
31 of this compact and the rules promulgated hereunder shall have
32 standing as statutory law.

33 (2) All courts shall take judicial notice of the compact
34 and the rules in any judicial or administrative proceeding in a
35 member state pertaining to the subject matter of this compact

1 which may affect the powers, responsibilities, or actions of
2 the commission.

3 (3) The commission shall be entitled to receive service
4 of process in any such proceeding and shall have standing to
5 intervene in such a proceeding for all purposes. Failure to
6 provide service of process to the commission shall render a
7 judgment or order void as to the commission, this compact, or
8 the promulgated rules.

9 *b. Default, technical assistance, and termination.*

10 (1) If the commission determines that a member state
11 has defaulted in the performance of its obligations or
12 responsibilities under this compact or the promulgated rules,
13 the commission shall do all of the following:

14 (a) Provide written notice to the defaulting state and other
15 member states of the nature of the default, the proposed means
16 of curing the default, or any other action to be taken by the
17 commission.

18 (b) Provide remedial training and specific technical
19 assistance regarding the default.

20 *c.* If a state in default fails to cure the default, the
21 defaulting state may be terminated from the compact upon an
22 affirmative vote of a majority of the member states, and all
23 rights, privileges, and benefits conferred by this compact may
24 be terminated on the effective date of termination. A cure of
25 the default does not relieve the offending state of obligations
26 or liabilities incurred during the period of default.

27 *d.* Termination of membership in the compact shall be imposed
28 only after all other means of securing compliance have been
29 exhausted. Notice of intent to suspend or terminate shall
30 be given by the commission to the governor, the majority and
31 minority leaders of the defaulting state's legislature, and
32 each of the member states.

33 *e.* A state that has been terminated is responsible for all
34 assessments, obligations, and liabilities incurred through
35 the effective date of termination, including obligations that

1 extend beyond the effective date of termination.

2 *f.* The commission shall not bear any costs related to
3 a state that is found to be in default or that has been
4 terminated from the compact unless agreed upon in writing
5 between the commission and the defaulting state.

6 *g.* The defaulting state may appeal the action of the
7 commission by petitioning the United States district court
8 for the District of Columbia or the federal district where
9 the commission has its principal offices. The prevailing
10 member shall be awarded all costs of such litigation including
11 reasonable attorney fees.

12 *h. Dispute resolution.*

13 (1) Upon request by a member state, the commission shall
14 attempt to resolve disputes related to the compact that arise
15 among member states and between member and nonmember states.

16 (2) The commission shall promulgate a rule providing for
17 both mediation and binding dispute resolution for disputes as
18 appropriate.

19 *i. Enforcement.*

20 (1) The commission, in the reasonable exercise of its
21 discretion, shall enforce the provisions and rules of this
22 compact.

23 (2) By majority vote, the commission may initiate legal
24 action in the United States district court for the District
25 of Columbia or the federal district where the commission has
26 its principal offices against a member state in default to
27 enforce compliance with the provisions of the compact and its
28 promulgated rules and bylaws. The relief sought may include
29 both injunctive relief and damages. In the event judicial
30 enforcement is necessary, the prevailing member shall be
31 awarded all costs of such litigation including reasonable
32 attorney fees.

33 (3) The remedies herein shall not be the exclusive remedies
34 of the commission. The commission may pursue any other
35 remedies available under federal or state law.

1 13. *Date of implementation of the counseling compact*
2 *commission and associated rules, withdrawal, and amendment.*

3 a. The compact shall come into effect on the date on
4 which the compact statute is enacted into law in the tenth
5 member state. The provisions, which become effective at
6 that time, shall be limited to the powers granted to the
7 commission relating to assembly and the promulgation of rules.
8 Thereafter, the commission shall meet and exercise rulemaking
9 powers necessary to the implementation and administration of
10 the compact.

11 b. Any state that joins the compact subsequent to the
12 commission's initial adoption of the rules shall be subject
13 to the rules as they exist on the date on which the compact
14 becomes law in that state. Any rule that has been previously
15 adopted by the commission shall have the full force and effect
16 of law on the day the compact becomes law in that state.

17 c. Any member state may withdraw from this compact by
18 enacting a statute repealing the same.

19 (1) A member state's withdrawal shall not take effect until
20 six months after enactment of the repealing statute.

21 (2) Withdrawal shall not affect the continuing requirement
22 of the withdrawing state's professional counseling licensing
23 board to comply with the investigative and adverse action
24 reporting requirements of this compact prior to the effective
25 date of withdrawal.

26 d. Nothing contained in this compact shall be construed to
27 invalidate or prevent any professional counseling licensure
28 agreement or other cooperative arrangement between a member
29 state and a nonmember state that does not conflict with the
30 provisions of this compact.

31 e. This compact may be amended by the member states. No
32 amendment to this compact shall become effective and binding
33 upon any member state until it is enacted into the laws of all
34 member states.

35 14. *Construction and severability.* This compact shall be

1 liberally construed so as to effectuate the purposes thereof.
2 The provisions of this compact shall be severable and if any
3 phrase, clause, sentence, or provision of this compact is
4 declared to be contrary to the constitution of any member
5 state or of the United States or the applicability thereof
6 to any government, agency, person, or circumstance is held
7 invalid, the validity of the remainder of this compact and the
8 applicability thereof to any government, agency, person, or
9 circumstance shall not be affected thereby. If this compact
10 shall be held contrary to the constitution of any member state,
11 the compact shall remain in full force and effect as to the
12 remaining member states and in full force and effect as to the
13 member state affected as to all severable matters.

14 15. *Binding effect of compact and other laws.*

15 a. A licensee providing professional counseling services in
16 a remote state under the privilege to practice shall adhere to
17 the laws and regulations, including scope of practice, of the
18 remote state.

19 b. Nothing herein prevents the enforcement of any other law
20 of a member state that is not inconsistent with the compact.

21 c. All laws in a member state in conflict with the compact
22 are superseded to the extent of the conflict.

23 d. All lawful actions of the commission, including all rules
24 and bylaws properly promulgated by the commission, are binding
25 upon the member states.

26 e. All permissible agreements between the commission and the
27 member states are binding in accordance with their terms.

28 f. In the event any provision of the compact exceeds the
29 constitutional limits imposed on the legislature of any member
30 state, the provision shall be ineffective to the extent of the
31 conflict with the constitutional provision in question in that
32 member state.

33

EXPLANATION

34 The inclusion of this explanation does not constitute agreement with
35 the explanation's substance by the members of the general assembly.

1 This bill relates to the adoption of the professional
2 counselors interstate licensure compact.

3 The compact establishes a system whereby professional
4 counselors licensed to practice in one member state may
5 practice in another member state under a compact privilege
6 without applying for a license in that state. The compact
7 imposes certain minimum requirements on the licensure of
8 professional counselors in member states. The compact becomes
9 effective upon enactment of the compact by 10 states.

10 The compact creates a commission to administer the operation
11 of the compact. The commission is an instrumentality of the
12 member states. The compact includes provisions relating to
13 the purpose, establishment, and membership of the commission;
14 powers and privileges of the commission; active duty military
15 personnel; telehealth; adverse actions; joint investigations;
16 meetings and voting requirements; commission bylaws and rules;
17 commission committees; commission finances; records of the
18 commission; compact state compliance; venue for judicial
19 proceedings; qualified immunity, defense, and indemnification;
20 data and reporting; rulemaking; oversight, dispute resolution,
21 and enforcement; technical assistance and termination;
22 effective dates and amendments to the compact; withdrawal,
23 default, and expulsion; severability and construction; and the
24 binding effect of the compact and other laws.